

IN THE INCOME-TAX APPELLATE TRIBUNAL “J” BENCH MUMBAI  
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER

AND SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.6389/Mum/2016 (Assessment Year 2011-12)

Shri Prashant H. Valia 301, Heritage Plaza, A-Wing, Telli Galli Cross Lane, Andheri (E), Mumbai-400069. <b>PAN: AABV0946M</b>	Vs.	DCIT-20(2), 613, Piramal Chambers, 6 <sup>th</sup> Floor, Lalbaug, Parel, Mumbai-400012.
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Appellant

Respondent

Appellant by : Shri Devdatta Mainkar (AR)

Respondent by : Ms. Arju Garodia (DR)

Date of Hearing : 19.06.2018

Date of Pronouncement : 19.06.2018

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the order of Commissioner (Appeals)-36 Mumbai dated 04.07.2016, which arises from the assessment order passed by assessing officer under section 143(3) on 31 January 201 for assessment year 201-12.
2. Brief facts of the case are that assessee is an individual and partner in M/s United Brothers as well as in M/s Sombhav Developers. The assessee earned income by way of interest on capital, salary, and share in firms and remuneration as a working partner in the firms. The assessee filed his return of income for assessment year 2011- 12 on 28 September 2011 declaring total income of Rs. 45,53,260/-. The assessment was completed on 31 January 2014 under section 143(3). The assessing

officer while passing assessment order besides the other additions and disallowance made addition under section 14A for Rs. 3,06,316/- and also made addition on account of reimbursement of common maintenance charges of Rs.2,17,813/-. On appeal before Commissioner (Appeals) both the additions were confirmed. Therefore, further aggrieved by the order of Commissioner (Appeals) the assessee has filed present appeal before this Tribunal. The assessee has raised following grounds of appeal;

- (1) *On the facts and in the circumstances of the case, and in law, the learned Commissioner (Appeals) erred in confirming the disallowance of Rs. 3,06,315/- under section 14A made by assessing officer. The learned Commissioner (Appeals) erred in not appreciating that the appellant had sufficient interest free funds available for making the relevant investment, and therefore, no part of interest paid could be disallowed under section 14A. The learned Commissioner (Appeals) is also erred in not appreciating that appellant had not incurred any expenditure for earning exempt income. The appellant therefore, prays that the disallowance of Rs. 306316/- made under section 14A be deleted.*
- (2) *On the facts and in the circumstances of the case, and in law, the learned Commissioner appeal erred in confirming the addition of Rs.2,17,813/- made by learned assessing officer being the amount recovered by the appellant from the tenets as reimbursement of common maintenance charges. The appellant, therefore, prays that the addition of Rs.2,17,813/- be deleted.*
- (3) *Without prejudice to the ground No.2 above, the learned Commissioner (Appeals) further erred in rejecting the appellant's alternative ground that if aforesaid sum of Rs. 217813/- was to be assessed as income, then the same ought to be treated as part of rent and assessed under the head 'income from house property', and deduction under section 24 of the Act at 30% thereof to be allowed. The appellant, therefore, prays in alternative and without prejudice to the prayer made in the ground No2, that sum of Rs.217813/- be assessed as income from house property and deduction under section 24 be allowed from the same.*

3. We have heard learned authorised representative (AR) of the assessee and learned departmental representative (DR) for revenue and perused the material available on record. Ground No.1 relates to addition under section 14A of the Act. The learned AR of the assessee submits that no disallowance under section 14A is warranted as the assessee has not incurred any expenses for earning the exempt income. The assessee has sufficient interest free funds available for making investment for earning exempt income. The assessee invested only Rs. 1,98,68,2014/- during the relevant financial year . The assessee has interest free funds available in its capital account of Rs.4,42,84,857/-. The learned AR of the assessee has brought our attention at the capital account of the assessee (page 11 of PB). Therefore, the ld AR for assessee prayed that no interest disallowance under Rule 8D(2)(ii) is warranted. In support of his submissions the ld AR for the assessee relied on the decisions of Hon'ble Bombay High Court in CIT Vs Reliance Utilities [2009] 178 TAXMAN 135 (Bom) HDFC Vs DCIT [2016] 67 taxmann.com 42 (Bombay). It was further submitted that the assessee earned exempt income of Rs. 5,15,718/- on account of share of profit from partnership firm, long term capital gain of Rs. 13,470/-(STT paid), dividend of Rs.2,022/- and PPF interest of Rs. 9,630/- . The assessee has shown the exempt income under the statement of computation of business income (per page 7 of PB). Therefore, no expenditure was incurred in earning

- such exempt income. And prayed that disallowance under section 14A read with Rule D is also not warranted.
4. On the other hand the Id. DR for the revenue supported the order of the authorities below. The Id DR further submits that disallowance under Rule 8D(2)(iii), the disallowance @.5% of average value of investment during the year should be made under section 14A and suitable direction may be given to the assessing officer accordingly.
  5. We have considered the rival submissions of the parties and have gone through the orders of the authorities below. During the assessment the assessing officer noted that the assessee has shown exempt income and the expenses. The assessing officer further noted that the assessee has incurred interest expenditure of Rs. 9,86,910/- as reflected in the balance sheet. The assessee has not bifurcated the interest expenses attributable for earning exempt income. Therefore, the assessing officer invoked the provisions of Rule 8D and made the disallowance under Rule 8D(2)(ii) of Rs. 2,08,904/-and under Rule 8D(2)(iii) of Rs. 97,412/-.
  6. The Id. Commissioner (Appeals) confirmed the action of assessing officer holding that the disallowance made by assessing officer is quite justified. We have noted that during the relevant financial year, the assessee has shown the investment of Rs.1,98,68,204/-during the year under consideration. The assessee has interest free funds available in its capital account of Rs. 4,42,84,857/-. Therefore, considering the decision

of Hon'ble Bombay High Court in case of Reliance Utilities (supra) and in case of HDFC Vs DCIT (supra) we find that no disallowance under Rule 8D2(ii) is warranted as the assessee has sufficient interest free funds available at the end of relevant assessment year for making investment for earning exempt income. Therefore, the assessing officer is directed to delete the disallowance under Rule 8D2(ii). So far as disallowance under Rule 8D to(iii) for Rs. 97,412/- is concerned, we have noted that assessee has shown long term capital gain of Rs.13,470/- on which the assessee has already paid security transaction charges (STT). The assessee has shown the share of profit from firm in the computation of business income, therefore no further disallowance on exempt income of Rs. 5,15,718/-is required to be made. The assessee has received only interest on PPF for Rs.9630/- and dividend of Rs.2022/-. Considering the peculiarity of the facts of the case, we do not find any reason to sustained the disallowance under Rule 8D (iii) made by assessing officer. Hence, the assessing officer is directed to delete the disallowance under Rule 8D2(iii) as well. In the result ground number one of the appeal is allowed.

7. Ground No. 2 and 3 relates to addition of common maintenance charges of Rs. 2,17,813/- . The learned AR of the assessee submits that assessee is the co-owner of the property and receives the rent along with his minor son. The assessee also received maintenance charges of

Rs.2,17,813/- on account of maintenance charges. The said maintenance charges was not considered the taxable income on the basis of advice of tax consultant and professional as the same is merely reimbursement of maintenance expenses incurred by assessee. The details of maintenance charges were furnished to the assessing officer. The learned AR of the assessee prayed that the maintenance charges be allowed as reimbursement of cost incurred by assessee on certain common amenities and maintenance of common area of the property being used by various occupants. In alternative submissions the learned AR of the assessee submits that the said maintenance charges be included in the rental income and the assessee be allowed standard deduction accordingly. On the other hand the learned DR for the revenue relied upon the order of Commissioner (Appeals).

8. We have considered the submission of learned representative of the parties and have gone through the orders of authorities below. During the assessment proceeding the assessing officer asked the assessee as to why the total maintenance charges of Rs.2,17,813/- should not be treated as income of the assessee. No satisfactory explanation was furnished by assessee, therefore, the amount of Rs.2,17,813/- was added to the total income of the assessee. The learned Commissioner (Appeals) confirmed the action of assessing officer on his observation that as per the statutory provision the assessee is automatically entitled for 30% of

the deduction of rental income under section 24 of the Act. The alternative contention of assessee was not accepted by learned Commissioner (Appeals) holding that the assessee has failed to disclose all the receipt against the income from house property while including/computing annual letting value (ALV). Therefore, the alternative contention of assessee was not accepted. Considering the fact that learned AR of the assessee has offered the additional receipt received on account of maintenance charges as receipt on account of income from house property, therefore, we accept the alternative contention of the assessee and restore this ground of appeal to the file of assessing officer to include the receipt of Rs.2,17,813/- as income from house property and allowed accordingly the statutory deduction available to the assessee under law. Needless to order that before passing the order the assessing officer shall grant opportunity of hearing and making submissions to the assessee. In the result ground No.2&3 of the assessee is allowed for statistical purpose.

9. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 19 .06.2018.

**Sd/-**  
**G.S. PANNU**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 19 .06.2018

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**Copy of the Order forwarded to :**

1. Assessee
3. The concerned CIT(A)
5. DR "J" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

**BY ORDER,**  
**Dy./Asst. Registrar**  
**ITAT, Mumbai**